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Dated: June 26, 2003

Signature:

Fani Malikouzakis
(Fani Malikouzakis)

HUBR 1159 (10016584)

165749
7/18/03



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Patent Application of:
Josef BURG et al.

Application No.: 09/555,950

Group Art Unit: 1654

Filed: August 17, 2000

Examiner: Maury A. Audet

For: ERYTHROPOIETIN WITH SPECIFIC
ACTIVITY

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

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TECH CENTER 1600/2900

Dear Sir:

This is submitted in response to the Restriction Requirement dated June 3, 2003. The Examiner has divided the claims into three groups, arguing that lack of unity exists because the claims do not share a patentable distinction. The Examiner cites a patent by Fibi, i.e., U.S. Patent No. 5,106,954 in support this position.

In response, Applicants elect Group I, and traverse the Examiner's position as Fibi is not relevant to the claims under consideration.

All claims relate to erythropoietin containing compositions, where the glycosylation pattern of the full length molecule.

According to the Examiner:

"U.S. 5,106,954 (Fibi et al.) teach EPO in composition
(claim 5, and entire document.)

The Examiner is incorrect.

Claim 5 of Fibi recites:



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“A pharmaceutical composition containing at least one EPO peptide as claimed in claim 1.”

Claim 1 of Fibi claims 9 peptides, and no EPO *per se*. Indeed, the claim expressly state:

“a peptide of less than the complete erythropoietin protein.”

If the claims relates to “a peptide less than the complete erythropoietin protein,” then how can they render other claims, to the whole EPO molecule novel?

Further, the entirety of the Fibi patent, as exemplified by, e.g., column 3, line 30 *et seq.*, is addressed to the manufacture of peptides so that EPO antibodies can be made. There is no discussion within Fibi of EPO containing compositions, or modifications of the glycosylation patterns thereof.

In view of the foregoing, it is believed that the restriction requirement is erroneous, should be withdrawn, and all claims examined.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-HUBR 1159-US (10016584) from which the undersigned is authorized to draw.

Dated: June 26, 2003

Respectfully submitted,

By 

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